Supreme Court, U.S.
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No. 95-826

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

SAM S. JENKINS, SR.,
Petitioner,

v.

STATE OF NEW MEXICO, SECURITIES DIVISION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

RESPONDENT'S BRIEF IN OPPOSITION

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Counsel for Respondent

QUESTIONS PRESENTED

1. Whether Petitioner's newspaper advertisement offering to sell to the public shares in his book violated NMSA 1978 §58-13B-3(A), which requires state licensing for securities sales representatives.

2. Whether Petitioner's newspaper advertisement offering to sell to the public shares in his book violated NMSA 1978 §58-13B-20, which requires registration of such shares with the New Mexico Securities Division.

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No. 95-826

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

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STATE OF NEW MEXICO, SECURITIES DIVISION,
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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

RESPONDENT'S BRIEF IN OPPOSITION

The respondent, State of New Mexico, Securities Division, by and through its Special Assistant Attorney General and General Counsel, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the State of New Mexico Court of

Appeals' memorandum opinion in this case. That opinion is attached to the petition as Appendix C. (Pet. A-19)

STATEMENT OF FACTS

Petitioner authored and published a book. Petitioner transferred shares of such book to the publisher and, subsequently, attempted to raise funds to pay publishing costs by offering in a newspaper advertisement to sell shares in such book to the public. Respondent, based on results of its investigation, issued a summary order to Petitioner to cease and desist violating state law and proposing to impose sanctions. Petitioner was granted a hearing on the summary order, as provided by state law. Respondent thereafter issued its final order, concluding that Petitioner had violated the state securities act, ordering Petitioner to cease and desist violating state law, and imposing sanctions. Petitioner appealed to the state court of appeals, which affirmed the final order, and Petitioner, thereafter, sought certiorari by the state supreme court. The state supreme court denied Petitioner's request for certiorari.

Petitioner's Statement of the Case makes repeated

misrepresentations of the facts and of the proceedings below. (Pet. 5-14) Furthermore, Petitioner's Table of Contents incorrectly identifies Appendix A of the petition as the "Final order of Securities Div. of the State of New Mexico, August 9, 1994", which is the administrative order that is the subject of this appellate proceeding. Appendix A of the petition is, in fact, a copy of the November 30, 1994 Calendar Notice issued by the New Mexico Court of Appeals. (Pet. A-1)

A copy of the New Mexico Securities Division's Final Order dated August 9, 1994 is attached hereto as Appendix A, for this Court's convenience and to provide a more accurate statement of facts, correcting petitioner's misrepresentations thereof. For these reasons, the Findings of Fact contained in Appendix A (*Infra*, 1a-5a) are incorporated herein as though fully set forth.

REASONS WHY THE PETITION SHOULD BE DENIED

1. This Court lacks jurisdiction to review the opinion of the state court below because that opinion is based on independent and adequate state grounds.

Petitioner seeks review by this Court of the memorandum

opinion of the New Mexico Court of Appeals (the opinion), wherein that court determined legal issues based solely on its application of the New Mexico Securities Act of 1986 (the state act), NMSA 1978, §§58-13B-1 through 58-13B-56. The opinion held that Respondent applied the state act correctly. (Pet. A-25) The opinion further held that Respondent's findings of fact and conclusions of law were based on substantial evidence on the record as a whole, that the findings support the conclusions and that the conclusions appeared to be sound. (Pet. A-27 - 28) In affirming Respondent's order, the Court of Appeals determined the following legal issues: certain shares offered by Petitioner in the book he authored were "securities" under §58-13B-2(V) of the state act; and Petitioner violated §58-13B-20 and §58-13B-3(A) of the state act when he ran a newspaper advertisement offering such shares for sale to the public. (Pet. A-25 - 27) The Court of Appeals decided only those legal issues and no federal question was either raised or decided in the proceedings below.

Petitioner submits that the sole legal issue presented for review before this Court deals with the application of a New Mexico statute

where he states in his petition "The single fact to be considered is the N.M. statute and other case law which defines Appellant's transaction as an 'exempt isolated non-issuer transaction.'" (Pet. 13) The only statute cited in the petition's table of authorities is NMSA 1978 §58-13B-27, which sets forth the exempt transactions under the state act. Except for the reference to four amendments to the United States Constitution, Petitioner's table of authorities cites only that statute and eight cases dealing with the isolated transaction exemption found in the statutes of various states other than New Mexico.

The petition fails to state a basis for invoking the jurisdiction of this Court. The only basis available to Petitioner, as set forth in 28 U.S.C. §1257 and Rule 10, is when the court below has decided a federal question, which is not the case here.

The state court opinion below determines the sole legal issue under its review by applying state statutes and case law, without reference to any federal question. The opinion is based on independent and adequate state grounds and, therefore, this Court is without jurisdiction to review it. *Illinois v. Rodriguez*, 497 U.S. 177, 183

(1990).

2. This Court lacks authority to consider federal questions raised for the first time in the petition, if any, because such questions are not part of the record below.

In order for this Court's jurisdiction to be invoked to review a state court decision, the highest court of the state must have decided a federal question that was properly raised in the state proceedings below. 28 U.S.C. §1257. The federal question must be raised in state appellate courts pursuant to state procedural rules. *Webb v. Webb*, 451 U.S. 493, 502 (1981). Petitioner raised 7 "points" in his docketing statement filed in the New Mexico Court of Appeals and his appeal below was limited to the legal issues presented in those "points". Rules of Appellate Procedure SCRA 1986 §12-208 (the docketing statement must include a short concise statement of the legal issues on appeal, general conclusory statements will not be accepted) (See Petitioner's Docketing Statement attached hereto as Appendix B) The Court of Appeals determined that all but one of the legal issues presented as "points" in the docketing statement were conclusory statements relating to factual matters, conduct of witnesses and attorneys at the administrative

hearing, and credibility of witnesses and documentary evidence presented to the original fact finder. (Pet. A-23) The Court of Appeals deferred those matters to the discretion of the administrative fact finder, citing *Mascarenas v. Jaramillo*, 111 N.M. 410, 412, 806 P.2d 59, 61 (1991) (only the trier of fact may weigh the testimony, determine the credibility of witnesses, reconcile inconsistent or contradictory statements of a witness, and ascertain the truth). (Pet. A-24) Point 1 of the docketing statement presented the only legal issue and that was determined by the Court of Appeals by applying state law, i.e. that Petitioner violated the New Mexico Securities Act. (App., *infra*, 9a; Pet. A-25) Since no federal questions were raised in the docketing statement below, nor were any federal questions decided by the Court of Appeals, any such questions that might have been raised in the petition are outside the record below and, therefore, not reviewable by this Court. 451 U.S. at 496-497.

Rule 14.1(h) requires a concise statement in the petition specifying the stage in the proceedings below at which the federal question was raised; the manner of its raising and the disposition by the

courts thereof; and such quotation of specific, referenced parts of the record where the matter appears as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on the writ of certiorari. Beginning on page 2 of the petition, Petitioner attempts in vain to show that he raised various constitutional questions in the proceedings below. References to Petitioner's "Petition for Review" should be disregarded as outside the record below, because that pleading was contrary to state appellate procedure. (See Order To Show Cause Why Appeal Should Not Be Dismissed, attached hereto as Appendix C at 14a.) 451 U.S. at 502. Likewise, all references to Petitioner's "Response Brief to Calendar Notice" should be disregarded as outside the record below, because briefs are not ordinarily part of any record filed with this Court and cannot be used to establish that a federal question was raised below. *Lynch v. New York ex rel. Pierson*, 293 U.S. 52, 54 (1934). Also, the issues purported to be raised in Petitioner's brief were not in the docketing statement and, as a matter of New Mexico procedure, issues not raised in the docketing statement may not be raised for the first time

in the brief in chief. *De Tevis v. Aragon*, 104 N.M. 793, 796, 727 P.2d 558 (Ct. App. 1986). Additionally, all references on page 4 of the petition to Petitioner's "Petition for Writ of Certiorari" to the New Mexico Supreme Court should be disregarded as outside the record below, because the opinion of the Court of Appeals in this case represents the decision of the highest state court in this matter, which is the subject of this appeal, as required by 28 U.S.C. §1257. The petition should be denied because it fails to make the proper showing, pursuant to Rule 14.1(h), that federal questions were raised in the proceedings below. Rule 14.5.

Petitioner makes vague references to Amendments V, IX, X, and XIV and mentions "due process" and "equal protection of the laws" without explaining how those laws and legal concepts apply to this case. (Pet. 2,15) Also, Petitioner mentions "Federal Securities Act" without anything more being said as to how it relates to this matter. (Pet. 15) Much of this is a mere continuation of the conclusory type statements rejected by the state Court of Appeals below and should also be rejected by this Court. Petitioner's entire "Argument" portion of his

petition deals with the previous state law issues, decided by the court below, i.e. whether Petitioner violated §58-13B-3A and §58-13B-20 of the New Mexico Securities Act.

Petitioner's Question Presented does not properly state any federal question raised and decided below and should be disregarded. (Pet. i) 451 U.S. at 494-497. The first question implies selective prosecution, referring to constitutional rights under "Title 42". Title 42 is not cited anywhere else in the petition, including the list of authorities, nor is there any explanation as to what it is or how it relates to this matter. There is no reference to "Title 42" to be found anywhere in the proceedings below. The second question implies a violation of some amorphous Constitutional rights as a pro-se litigant. No explanation of those purported rights is to be found elsewhere in the petition, nor anywhere in the proceedings below. Indeed, the record clearly shows Petitioner has appeared pro-se throughout the entire proceedings in this matter and has been accorded the same, if not greater, deference as opposing counsel. Petitioner's own "Course of Proceedings Below" contradicts this allegation. (Pet. 5-8) The fourth

question implies incorrectly that Petitioner's appeal of the original administrative order to the state Court of Appeals was dismissed. That appeal was decided by the very memorandum opinion that is the subject of the petition before this Court. Memorandum opinions, such as the one before this Court in this matter, are expressly authorized, in the discretion of the reviewing court, by New Mexico Rules of Appellate Procedure, SCRA 1986 §12-405. The proper exercise by the state Court of Appeals of its discretion pursuant to state procedural rules was not challenged below and cannot be used to state a federal question for the first time before this Court. The fifth question raises for the first time a state procedural issue, questioning the authority of the New Mexico Supreme Court to deny Petitioner's Petition for Writ of Certiorari to the state Court of Appeals. The New Mexico Constitution, Article VI, §2 and Rules of Appellate Procedure SCRA 1986 §12-102 provide Petitioner with an absolute right in this matter to one appeal to the state Court of Appeals. Further review by the state Supreme Court is completely within that court's discretion, which was not challenged below. The third question, although poorly framed, deals with the only

issues that were raised and decided below, i.e. whether Petitioner violated §58-13B-3A and §58-13B-20 of the New Mexico Securities Act. As previously set forth (pp. 3-6, *supra*), the court below decided this issue by applying state law and without any reference to federal law.

The petition fails to show that Petitioner properly raised any federal question in the record below. This Court may not consider any federal question in the petition, if any, because it has been raised for the first time before this Court. 451 U.S. at 494-497.

3. This Court lacks jurisdiction to review the opinion of the state court below because the petition fails to state a proper basis for invoking the jurisdiction of this Court, founded upon either a federal statute or constitutional provision, as required by Rule 14.1(e) and (f).

The jurisdictional statute, 28 U.S.C. §1257, provides for review by this Court of a judgment rendered by the highest court of a state where:

> ...the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the

> Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Rule 14.1 requires the petition for writ of certiorari to include:

> (e) A concise statement of the grounds on which the jurisdiction of this Court is invoked showing:
>
> ...
>
> (iv) The statutory provision believed to confer on this Court jurisdiction to review the judgment ... in question by writ of certiorari.

Petitioner's jurisdiction statement makes no reference to any specific statutory provision, either federal or state, conferring jurisdiction of this matter on this Court as required by Rule 14.1. (Pet. 2)

Rule 14.1 further requires the petition to include:

> (f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, setting them out verbatim, and giving the appropriate citation therefor.

Petitioner's "Constitutional Provisions and Statutes" (Pet. 2) references three sections of the New Mexico Securities Act, followed by:

The Constitution of the United States; "Due Process and

Equal Protection of the Laws" Amendments V, IX, X, XIV

There is no verbatim setting out of the constitutional provisions cited as required by Rule 14.1(f), nor is there any exposition elsewhere in the petition as to how such provisions relate to this matter.

The petition fails to make a proper statement of specific statutes or constitutional provisions on which it invokes this Court's jurisdiction, as required by Rule 14.1, and should be denied pursuant to Rule 14.5.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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(505) 827-7140
Counsel for Respondent

STATE OF NEW MEXICO
SECURITIES DIVISION
725 ST. MICHAEL'S DRIVE
SANTA FE, NEW MEXICO 87501

IN THE MATTER OF:	)	
	)	
Sam S. Jenkins, Sr.	)	
	)	
Respondent	)	Order No. 94-93-064-125(FO)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter was the subject of a hearing on October 14, 1993, at the office of the New Mexico Securities Division. The Director, Nancy M. Smith, appointed John B. Hiatt to act as hearing officer by order dated October 13, 1993. The staff of the New Mexico Securities Division ("the Division") was represented by Michael J. Vargon, Deputy Director. The Respondent, Sam S. Jenkins, Sr., was present and represented himself. The Division presented two witnesses, Senior Special Agent, Ken Alessio and the General Counsel, Karol L. K. Pollock, both employees of the Division. Mr. Jenkins called himself as his only witness.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER were submitted by Mr. Hiatt to the Director on June 24, 1994. The following FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER are based upon the Director's independent review of the record of the hearing and the Hearing Officer's recommendations.

FINDINGS OF FACT

The Director hereby finds that:

1. On July 15, 1993, Order No. 93-93-064-73(CD) and the accompanying Notice of Opportunity for Hearing were issued. See Plaintiff's Exhibit 1A.

2. On July 26, 1993, the Respondent mailed an answer to the Division responding to the allegations contained in the Division's Order identified in paragraph 1 above. See Plaintiff's Exhibit 1B.

3. On August 20, 1993, a formal hearing was set for September 15, 1993. See Plaintiff's Exhibit 1C.

4. On September 7, 1993, the Respondent waived the time limit for a hearing and requested an informal hearing. See Plaintiff's Exhibit 1D.

5. On September 20, 1993, a formal hearing was scheduled for October 14, 1993. See Plaintiff's Exhibit 1E.

6. On October 13, 1993, an order appointing John B. Hiatt hearing officer was issued. See Plaintiff's Exhibit 1F.

7. On March 28, 1993, a classified advertisement, placed and written by the Respondent, appeared in the Albuquerque Journal. The advertisement stated: "SMALL Investors! 15% guaranteed return. Multi-published author. 292-7670 X8 or 821-7522." Plaintiff's Exhibit 2.

8. On or about March 31, 1993, the Division's Senior Special Agent, Ken Alessio, called the telephone number listed in the advertisement and spoke with a man who identified himself as Mr. Lynne. The Division, as part of its enforcement program, routinely scans classified advertisements and investigates those advertisements which appear to solicit investments in securities. According to Division policy, Mr. Alessio investigated this advertisement in an undercover capacity and

assumed an alias in his dealings with the individual identified as Mr. Lynne.

9. During this initial telephone conversation, Mr. Lynne told Mr. Alessio that All States Publishing Company was raising funds for a book on the American judicial system and selling shares for $1000.00 per share with a fifteen percent guaranteed return. Mr. Alessio replied that he and his brother had $40,000.00 to invest. On April 2, 1993, Mr. Alessio called Mr. Lynne to set up a meeting on April 6, 1993, at 3815 Eubank N.E., Suite A, Albuquerque, New Mexico.

10. On April 6, 1993, Mr. Alessio and Ms. Karol L. K. Pollock arrived at the Albuquerque office in an undercover capacity and asked for Mr. Lynne. The Respondent met with Mr. Alessio and Ms. Pollock, informing them that his real name was Sam Jenkins and that Lynne was his pen name. The Respondent also stated the following:

a) He was writing a book entitled Dracula in Charge of the Bloodbank;
b) Funds had been depleted in researching the book and additional funds were needed to finish the book by June or July, 1993;
c) A company named All States Publishing was selling shares in the book for $1,000.00 per share with a guaranteed fifteen percent annual return and return of principal two years from the date of publication;
d) There was a total of 250 shares available, 150 shares belonging to All States Publishing and 100 belonging to the Respondent;
e) There were currently three investors, and the total number of investors was not to exceed half a dozen;
f) Shares were available and Respondent would be willing to sell Alessio a portion of his shares if

additional shares were needed;

g) When asked by Mr. Alessio if this investment complied with state and federal laws applying to the sale of stock, the Respondent replied that because this was not a public issue of securities, there was no need to comply with federal and state laws. In addition, because there were fewer than thirty-six investors, SEC rules did not apply.

At the conclusion of the meeting, the Respondent gave Mr. Alessio copies of two documents entitled Judicial Book Investment 4/1/93 and Certificate of Shares and Purchase Agreement. These written documents provided a description of the shares and purchase terms as related verbally by the Respondent. See Plaintiff's Exhibits 3 and 4.

11. The testimony of Mr. Alessio and Ms. Pollock differed on the exact number of shares that Respondent offered at the meeting. Ms. Pollock testified that fifty shares or more were of offered, while Mr. Alessio stated twenty share or more were of offered. The fact remains that the Respondent did offer to sell a number of All States Publishing's shares of the book to Mr. Alessio. Plaintiff's Exhibit 3 states in the last paragraph that "(t)he Publishing Corp. will sell 50 shares at $1,000 per share certificate."

12. Mr. Alessio and Ms. Pollock conducted a proper undercover investigation which would not have induced a reasonable person without a predisposition to violate the New Mexico Securities Act of 1986 ("the Act") to do so.

13. At the time that the Respondent offered the shares to Mr. Alessio, he was not licensed as a broker-dealer, sales representative or investment adviser in the state of New Mexico.

14. At the time that the Respondent offered the shares to Mr. Alessio, the shares were not registered as securities in the state of New Mexico nor exempt under the Act.

Based upon the foregoing findings of fact, the Director hereby makes the following

CONCLUSIONS OF LAW

1. The shares which Respondent offered in All States Publishing were securities within the meaning of Section 58-13B-2(V) of the Act.

2. The Respondent violated Section 58-13B-20 of the Act by offering to sell securities which were neither registered nor exempt under the Act.

3. The Respondent violated Section 58-13B-3(A) of the Act by offering to sell securities as an unlicensed sales representative.

4. The Division did not sustain their burden of proof in showing that Respondent's conduct violated Section 58-13B-5 of the Act by acting as an unlicensed investment adviser.

5. Given these violations, it is in the public interest and consistent with the purposes of the Act to enter a final order.

DISCUSSION

It is well settled law that selling unregistered non-exempt securities as an unlicensed sales representative within New Mexico are per se violations of the Act.

Mr. Jenkins offered several arguments in his defense. First, Mr. Jenkins claimed that he had been unfairly targeted for investigation by lawyers in the Division because of the subject matter

of his book, Dracula In Charge of the Bloodbank: An Expose of the American Judicial System. At the hearing, Mr. Jenkins offered no evidence to refute the fact that his advertisement, which did not mention the title or subject matter of the book, triggered the Division's investigation. Nor did Mr. Jenkins present any evidence that would indicate that the Division was pursuing him for such improper motives. Second, Mr. Jenkins claimed that the Division acted in an unreasonable and outrageous manner by conducting an undercover operation against him. Mr. Jenkins did not present any credible evidence at the hearing which demonstrated unreasonable or improper conduct on the part of Mr. Alessio or Ms. Pollock in discharging their investigatory duties. Mr. Alessio and Ms. Pollock did not engage in any conduct which would have induced a reasonable person without a predisposition to violate the Act to do so. Third, Mr. Jenkins testified that he had reviewed the Act before placing his advertisement and believed that the shares were exempt from the Act's registration requirements under Section 58-13B-27(A) providing an exemption for an isolated non-issuer transaction. Under Section 58-13B-28(B) of the Act, the burden of proving an exemption falls upon the person claiming the exemption. Mr. Jenkins did not meet this evidentiary burden at hearing.

IT IS THEREFORE ORDERED THAT:

1. The Respondent shall cease and desist soliciting, offering and selling securities of any kind in New Mexico without first complying with all requirements of the Act; and

2. The Respondent shall within thirty days of the receipt of this order pay a total civil penalty in the amount of $2,000.00 pursuant to Section 58-13B-37 of the Act.

ENTERED AT Santa Fe, New Mexico this 9th day of August, 1994.

/s/ Nancy M. Smith
Nancy M. Smith, Director
New Mexico Securities Division

IN THE NEW MEXICO COURT OF APPEALS

STATE OF NEW MEXICO
SECURITIES DIVISION

Plaintiff

N.M. State Securities Division
Order No. 94-93-064-125 (FO)

SAM S. JENKINS, SR

Appeals Ct. No. 15,836

Respondent

DOCKETING STATEMENT

COMES NOW SAM S. JENKINS, SR., pro se and files this Docketing Statement of appeal as follows;

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4. Statement of the Issues on Appeal 3-4
5. Record of Procedings 4
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Submitted By

/s/ Sam Jenkins, Sr.

Sam Jenkins, Sr., pro se
POB 21032
Albquuerque, N.M. 87154
Telephone 505-821-7522

I certify that a true copy of the foregoing was mailed this 31 day of October, 1994 to parties of record.
/s/ Sam Jenkins, Sr.
Sam S. Jenkins, Sr.

NATURE OF PROCEDING

This case arises out of an Administrative Law Order and Sanctions by the State of New Mexico, Securities Division against Sam S. Jenkins, Sr., Respondent, for alleged violations of the New Mexico Securities Act of 1986, Section 58-13B-2 (V), 58-13b-20 and 58-13B-3 (A). Respondent allegedly violated the act in running a classified ad offering for sale an interest in a current non-fiction book which Respondent was writing and later published.

JUDGEMENT AND ORDER SOUGHT FOR REVIEW

ORDER from the New Mexico Securities Division against Respondent entered on the 9th day of August, 1994.

STATEMENT OF THE CASE

The case was initiated by the New Mexico Securities Division after insertion of a classified ad by Respondent offering to sell an interest in a current non-fiction book which Respondent was writing. An undercover agent of the NMSD made a telephone call to Respondent asking about the book, the title and substance of the book, the investment, etc.. After telling the caller the book was about the

American Judicial System and the dominant lawyer culture in America, the NMSD headed by a lawyer, then sent in two undercover agents (one a lawyer) to investigate the offer and gain information on the book and the offer to sell an interest in the book. No sale or shares of interest in the book were made to anyone as a result of the classified ad. In fact Respondent withdrew his offer to sell any shares as other financial arrangements were made to publish the book. Ninty days after the undercover agents visit, the Securities Division filed a complaint against Respondent based upon mis-statements of the undercover agents. As stated in Respondent's Petition for Review the entire action by the New Mexico Securities Division had no merit in law and represented no more than a ludicrous "lawyer harrassment and lawyer inducement"

STATEMENT OF ISSUES ON APPEAL

POINT 1 - The Order or Judgement is not supported by law or evidence presented in testimony at the hearing. Evidence in the case under the statutes does not support any violations charged in the complaint. Respondent did not violate Section

58-13B-20 by an offering that was exempt under the act. The Securities Act. does not require licensing and registration of anyone making an offering exempt under the act. Respondent therefore did not violate Section 58-13B-3 (A) as alleged.

POINT 2 - Description of securities transactions repeatedly refer to sales. The offering was withdrawn and no sales resulted.

POINT 3 - The hearing officer in this case was the supervisor of a lawyer in the Attorney Generals office who had previously fraudulently targeted and harrassed the Respondent in an unrelated case. A clear conflict of interest.

POINT 4 - Agents in the Securities Division resorted to gross mis-statements and deception to justify bringing the charges against Respondent. Compare complaint and agents testimony of record in the hearing.

POINT 5 - The conclusions of law given by the NMSD in their final order are erroneous and contain mis-statements. The transaction charged by the NMSD is "exempt" as a unique "Isolated" transaction occuring alone or once, "not to recur".

See table of authorities.

POINT 6 - The Discussion offered as facts in the NMSD Order is erroneous and contain mis-statements. See Respondents Petition for Review at page 3, paragraph 8.

POINT 7 - Respondent has been the target of political persecution under the guise of judicial prosecution. Respondent should be reimbursed for his time, travel and expense. The NMSD should be sanctioned for their disguised acts of political persecution toward Respondent. See Respondents Petition for Review at page 4, paragraph B (6) and paragraph C.

RECORD OF PROCEDINGS

The procedings of the hearing conducted by the NMSD were tape recorded and are available to support the issues raised in thisf appeal.

TABLE OF AUTHORITIES

N.M. Statutes 58-13B-27 (A) Exempt Transactions

"An Isolated non-issuer transaction is exempt, whether or not effected through a broker-dealer."

White v. Solomon, 105 N.M. 366, 732 P.2d 1389

"For the Securities act to apply, the transactions must have some tangible connection to one another, more than just the same seller."

Ersted v. Hobart Howry Co., et al. 209 N.W. 66 SC of So. Dakota

"An isolated transaction is a transaction not made in course of repeated and successive sales of a similiar nature."

COURT OF APPEALS OF NEW MEXICO
FILED
OCT 21 1995
/s/Patricia R. Wallace

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO SECURITIES DIVISION,

plaintiff -Appellee,

No. 15,836

vs.

SAM S. JENKINS SR.,

Respondent-Appellant.

_____/

ORDER TO SHOW CAUSE WHY APPEAL SHOULD NOT BE DISMISSED

This matter having come before this Court on its own motion, and it appearing that:

1. On September 8, 1994, Appellant, Sam S. Jenkins Sr. appearing pro se filed a Petition for Review pursuant to NMSA 1978, Section 58-13B-56 (Repl.Pamp. 1991).

2. The Rules of Appellate Procedure provide that, to the

extent of any conflict, SCRA 1986, 12-601 (Repl. 1992) supersedes any statute providing for the time or other procedure for filing or perfecting an appeal with this Court. SCRA 12-601(B) provides that direct appeals from orders of administrative agencies shall be taken by:

> "filing a notice of appeal with the appellate clerk, together with the docket fee and proof of service thereof on the agency involved and all parties in accordance with Rule 12-307 within thirty (30) days from the date of the order, decision or action appealed from. Thereafter, within thirty (30) days of the filing of the notice of appeal or complaint on appeal, the appellant shall file a docketing statement in accordance with Rule 12-208 and the appeal shall thereafter proceed in accordance with these rules, notwithstanding any provision of law to the contrary."

3. We treat Appellant's Petition for Review as a Notice of Appeal. We note that Appellant has failed to attach a copy of the order appealed from with the Petition for Review and direct him to do so if he pursues this appeal. See SCRA 1986, 12-202 (B) (Repl. 1992).

4. As of the date of this Order, Appellant has failed to file a Docketing Statement. SCRA 1986, 12-601(A) and (B), 12-208, 12-

312(A) (Repl. 1992). The Docketing Statement should have been filed within thirty (30) days from the filing of the Petition of Review on September 8, 1994, or on or before October 11, 1994. To the extent the Petition for Review could be construed as a Docketing Statement, it fails to comply with SCRA 12-208 (B) (3), - (4), -(5), and -(6).

IT IS THEREFORE ORDERED that Sam S. Jenkins Sr. shall show cause in writing why this appeal should not be dismissed for failure to timely file a Docketing Statement. Mr. Jenkins' written response shall be filed with the Clerk of this Court no later than two (2) weeks from the date stamped on this Order to Show Cause. Mr. Jenkins shall also file a Docketing Statement that conforms with SCRA 12-208 within two (2) weeks from the date stamped on this Order. If no written response and no Docketing Statement are filed within two (2) weeks from the date stamped on this Order, this Court shall dismiss Appellant's appeal.

/s/Joseph Alarid
Judge